

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JAMES M. LYLE,

PLAINTIFF

V.

NO. 4:05CV112-P-B

SUPERINTENDENT JAMES V. ANDERSON, et al.

DEFENDANT

ORDER DECLINING TO ADOPT REPORT AND RECOMMENDATION

The Plaintiff brings this complaint pursuant to 42 U.S.C. § 1983. The case was originally filed and decided in the Southern District of Mississippi. Plaintiff appealed the court's decision and the Fifth Circuit Court of Appeals reversed in part and remanded the case to the Southern District. The matter was set for trial. Subsequently, by agreement of the parties and order of the court, the matter was transferred to the Northern District of Mississippi on May 3, 2005. Since that time, there has been no activity in the case.

On May 14, 2007, Magistrate Judge Eugene M. Bogen recommended that the matter be dismissed for failure to prosecute. Plaintiff's counsel promptly filed objections to the recommendation and explained the inactivity. In the interest that justice be served and Plaintiff granted the full opportunity to proceed with the case, the Report and Recommendation will not be adopted.

THEREFORE, it is hereby ORDERED that

- 1) Plaintiff's objections to the Report and Recommendation of the United States Magistrate Judge are SUSTAINED;
- 2) the court DECLINES to adopt the Report and Recommendation; and
- 3) this matter remain on the court's active docket and a scheduling order be entered promptly.

SO ORDERED, this the 22nd day of June, 2007.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE